FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 13-02

LISA ANNE CORNELL and
G. WARE CORNELL, Jr.

v.

PRINCESS CRUISE LINES (CORP)
CARNIVAL plc
and CARNIVAL CORPORATION

RESPONDENTS' RESPONSE TO COMPLAINANTS' EXCEPTIONS TO AND APPEAL OF INITIAL SUMMARY DECISION

Respondents respectfully submit this Response to Complainant's Exceptions to and Appeal of Initial Summary Decision.

I. Introduction

Although Complainants initially praise the work of the Administrative Law Judge ("ALJ"), they go on to challenge just about all of his rulings in their Exceptions to and Appeal of Initial Summary Decision (hereinafter Complainants' "Exceptions").

Responding to Complainants' Exceptions is difficult because they make broad and sweeping statements about what the ALJ purportedly said or how he ruled, but Complainants never cite to relevant the page numbers so these broad and sweeping statements can be verified without continually re-reading the entire ruling to locate the statement. The Federal Maritime Commission ("FMC") rules, specifically 46 U.S.C. § 502.227 (a)(1), require Complainants to cite to the page numbers of the sources they refer to – including the ALJ's initial ruling. Equally important, the federal rules also require proper citation to the record. *See e.g.*, *Waldridge v. American Hoechst Corp.,* 24 F.3d 918, 922 (7th Cir. 1994)("[D]istrict courts are not obliged in our adversary system to scour the record looking for factual disputes"); *Malec v. Sanford*, 191 F.R.D. 581, 583 (N.D. Ill. 2000) (Party must include "proper Bluebook citations to exact pieces of the record that support the factual contention contained in the paragraph. In other words, citations must include page (or paragraph) numbers … Factual allegations not properly supported by citation to the record are nullities"); *see also* 11th Cir. R. 28-1(k) (requiring attorneys to conform their citations to *The Bluebook: A Uniform System of Citation* or the *AWLD Manual*).

The real crux of Complainants' Exceptions is twofold. First, while the Cornells previously stated repeatedly that their real concern was Respondents' claimed refusal to allow them to take cruises, now the Cornells want money damages. Second, and perhaps most

important to the Cornells, they want to punish Princess financially.[1] As to the latter, the Cornells want to force Princess to expend more money in (1) litigation through unnecessary additional discovery, (2) fines and (3) paying money damages to the Cornells. All three of these are solely designed to continue to cost Princess money to defend this case. All three of these are unavailable to the Cornells because they yet again fail to provide any legal authority allowing them to recover the money damages they claim nor any authority fine Respondents. The ALJ correctly determined the Cornells did not suffer actual injury, and there is no basis to order additional discovery.

The following explains why the Cornells are not entitled to reparations under the Shipping Act, to additional discovery intended to again prolong this litigation and dispute, or to a determination by the FMC that additional violations of the Shipping Act occurred justifying their demand for fines and additional penalties.

II. Respondents Did Not Violate Section 10(b)(4) of the Shipping Act

As an initial matter, Ware Cornell knows his statements regarding the negotiations over their $1,000 donation to charity are factually incorrect. Moreover, he tried without any evidence to impart the donation he made to charity to Princess when Princess was not even a party to the litigation that was being settled. Ware Cornell was made aware of Mona Ehrenreich's breast cancer diagnosis back during the litigation in Florida state court. In fact, Ms. Ehrenreich submitted an affidavit back in February 2012 in which she advised Ware Cornell and the court that she did not attend or participate in the Cornell-GFA mediation and did not discuss the

[1] Although this Response is on behalf of all Respondents, it is evident that this case is really about the Cornells trying to get back at Princess and its general counsel Mona Ehrenreich. The ALJ already gave the Cornells what they wanted all along, for Lisa to be able to sail on Princess cruises, but that is now apparently not enough. Now they want damages and fines.

Cornell mediation with anyone on her legal staff as she had very recently been diagnosed with breast cancer and was out of the office undergoing emergency treatment for her cancer. She likewise never informed any other lawyers in her department about her decision to prohibit Lisa Cornell from cruising with Princess since none of the other attorneys were involved with the reservations or sales departments. Nor did Ms. Ehrenreich inform GFA of her decision because GFA was a separate company completely unrelated to Princess' reservations and sales staff. (*See* Declaration of Mona Ehrenreich, dated February 12, 2012, attached hereto as Exhibit 1.) In short, although Ms. Ehrenreich had intended to attend the mediation herself, more exigent life circumstances caused her to have more pressing issues on her mind than the Cornell-GFA mediation. Significantly, the GFA mediation involved only two parties – the Cornells and GFA. Neither Princess Cruises nor any other cruise line was a party to that litigation nor a party to the mediation of that dispute. Thus, no one participating in the mediation knew that Lisa Cornell was already on Princess' Do Not Book status. Under the circumstances, there is no basis for Ware Cornell's assertion that Princess hid Lisa Cornell's Do Not Book status for forty-five days. Ware Cornell knew these facts since at least February 2012. Moreover, such a claimed fact has no legal bearing on the issue at hand since Princess (who was not a party to the Cornell-GFA lawsuit or mediation) had no duty to attend the mediation nor to notify Cornell or GFA regarding its internal reservations policy.

Then, without citing where in the Initial Decision this was written, Complainants claim that the ALJ determined the $1,000 donation Lisa Cornell made to an animal shelter charity falls within section 10(b)(4) of the Shipping Act and constituted an unlawful tariff. That is not true. The ALJ stated that Lisa Cornell identified **no** evidence to support a finding that the donation had any relationship to common carriage of a passenger aboard a Princess vessel or any other

transportation rate or charge. The animal shelter donation was negotiated between GFA (an art dealer) and the Cornells in resolution of their dispute stemming from an art purchase Lisa Cornell had made while attending a GFA auction onboard a Carnival Cruise Lines vessel. It had nothing whatsoever to do with Princess. Princess was not a party to the Cornell–GFA mediation or settlement agreement and was therefore not under any obligation to secure travel for the Cornells under the Settlement Agreement. The Settlement Agreement merely required that GFA would not take any action from the date of the settlement forward to encourage any cruise line to hinder the Complainants from traveling. The Cornells previously accused GFA and Princess of breaching this Agreement in his second lawsuit. After a lengthy evidentiary hearing the court in that case ruled against Cornell and concluded no breach had occurred. It is of no consequence that the same attorney represented GFA and Princess because none of this converts Ms. Cornell's $1,000 charitable donation to the animal shelter as part of the Cornell's settlement with GFA into an unlawful rate or charge for transportation by Princess or the other Respondent cruise lines (none of whom were parties to the GFA litigation). Thus, the ALJ correctly determined that the $1,000 donation by Lisa Cornell to a local animal shelter near her home cannot be considered an unfair or unjustly discriminatory practice in the matter of rates or charges by Respondent cruise lines in violation of 10(b)(4).

III. The Cornells Suffered No Actual Injury and are Not Entitled to Reparations Under the Shipping Act

The ALJ correctly concluded that Complainants suffered no actual compensable injury and rejected Complaintants' demands for financial compensation. Complainants again cite no legal authority allowing recovery for the types of damages they allege. Complainants also, for the first time in their Exception, allege they are entitled to "reparations" for the "intangible value" of alleged depravation of rights under the Shipping Act including their claimed emotional

distress due to publicity over their FMC lawsuit and for claimed emotional damages supposedly incurred when Mrs. Cornell tried to book a cruise and the Princess' computer reservation system failed to accept her booking.[2] First and foremost, these claims for intangible emotional damages have never been made anywhere before and do not appear anywhere in the operative FMC Complaint filed by Complainants. They were not made in opposition to Respondents' Motions to Dismiss or Alternatively for Summary Judgment and therefore cannot be raised now for the first time in their Exception to or Appeal of the ruling. Moreover, the law cited by Complainants as supposedly allowing them to recover reparations is taken out of context because there is no authority for the proposition they make. Complainants attempt to draw farfetched analogies in order to bootstrap remedies from entirely unrelated statutes, such as the Federal Housing Act, onto the Shipping Act. Remedies from statutes that have nothing whatsoever to do with the Shipping Act cannot be read into the Shipping Act. "[I]t is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it. 'When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.'" *Transamerica Mortgage Advisors, Inc. (TAMA) v. Lewis*, 444 U.S. 11, 19-20, 100 S. Ct. 242, 247, 62 L. Ed. 2d 146 (1979) (quoting *Botany Mills v. United States*, 278 U.S. 282, 289, 49 S.Ct. 129, 132, 73 L.Ed. 379. See *Amtrak,* 414 U.S., at 458, 94 S.Ct., at 693; *Securities Investor Protection Corp. v. Barbour*, 421 U.S. 412, 419, 95 S.Ct. 1733, 1738, 44 L.Ed.2d 263; *T. I. M. E., Inc. v. United States*, 359 U.S. 464, 471,

[2] It is worth mentioning that Complainants were never "publicly humiliated" as they claim but, for arguments sake, had they not sought out media attention and incidentally breached the confidentiality clause in the Settlement Agreement by granting such media interviews, this matter would have never been brought into the "public" limelight. Complainants have not cited even a single instance of where Princess or any Respondent cruise line sought media attention for this dispute nor even responded to any media inquiry regarding the dispute. Only Complainants spoke to the media about this case!

79 S.Ct. 904, 908, 3 L.Ed.2d 952). Complainants suffered no actual injury and have no authority that is on point to provide for reparations nor the emotional distress they now contend constitutes additional owed reparations.

A. Lisa Cornell Was Voluntarily Refunded the $100 Deposit and She Has No Legal Basis to Claim Interest on the Deposit

The ALJ correctly concluded there was nothing in the terms and conditions governing the $100 deposit even suggesting that interest would be paid. When Lisa Cornell made the deposit she was advised that if it was not used within four years the deposit (NOT the deposit plus interest) would be returned. (*See* Letter from Princess, attached to Complainants' Memorandum in Response to Order to Supplement the Record as Exhibit 18, filed with the FMC on May 13, 2013.) Princess did exactly that. Without being asked to do so by the Commission, Princess voluntarily returned the deposit before the expiration of four years. None of these facts are in dispute. There is therefore no basis to award "reparations" based on a small deposit that was voluntarily returned according to its terms and conditions.[3]

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[3] Lisa Cornell claims that at a few of the 2011 state court hearings she requested the deposit be returned. Then referring to an Affidavit of Ms. Ehrenreich, the Cornells insist they were told the deposit would be returned in March 2011. The Cornell's factual recitation is again not accurate. First, after reviewing the transcripts from the referenced hearings it is not entirely clear that Lisa Cornell attended all of those claimed hearings and none of the transcripts show any request was made for a refund of any deposit. Defense counsel does not recall being asked to have Princess return any deposit; instead, defense counsel merely recalls learning at some point that Lisa Cornell made a $100 deposit for a future cruise. Moreover, in a prior Declaration, Lisa Cornell stated the opposite – that she intended to use the deposit on a future cruise, not that she wanted the deposit back. (*See* Declaration of Lisa Cornell, attached hereto as Exhibit 2 at ¶ 10.) No other information regarding the deposit was provided. Defense counsel was not provided with the exact date the deposit was made or what cruise it supposedly applied to. Nonetheless, given the contentious nature of state court litigation, defense counsel was concerned that Princess might be being set up and that Lisa Cornell may have posted a deposit purely to try to create standing for some future claim. In light of this suspicion Princess attempted to verify whether Ms. Cornell had made any such deposit so that it could be returned. In the Affidavit referenced by the Cornells, Ms. Ehrenreich accurately attested that she had put into action a refund of any deposit if one could be found. Princess ***did*** search for a possible deposit by Ms. Cornell in 2011 and

Next, Complainants misleadingly claim the ALJ noted that "interest is always allowed," without citing to a page number where the ALJ supposedly made such a remark. Indeed, the ALJ quoted the heading of a section of a brief authored by Complainants titled "*Interest is always awardable*" but in no way did the ALJ embrace or support the heading or arguments contained therein. *See* Initial Summary Decision on Respondents' Motion to Dismiss or for Summary Decision, hereinafter "Initial Decision," at 66. Instead, the ALJ correctly and immediately concluded that "Lisa Cornell does not cite any authority that would entitle her to an award of interest on the $100 [deposit]." *Id.* at 67. Lisa Cornell had no expectation of interest on the deposit because Princess expressly stated that if she were to not use the deposit it would be refunded in four years without any promise of interest added to the refunded amount. (*See* Letter from Princess, attached to Complainants' Memorandum in Response to Order to Supplement the Record as Exhibit 18, filed with the FMC on May 13, 2013). Complainants cite to no authority granting them a right to collect interest on a deposit they never had an expectation of interest on so their demand was correctly denied. There are no recompensable reparations available as a result of the voluntary return of the deposit.

B. The Cornells Are Not Entitled to "Reparations" for their Cruise Booking on Holland America's *Maasdam*

Contrary to what Complainants assert, the ALJ did not make any conclusions about the desirability of booking a cruise on Holland America's *Maasdam* versus on Princess Cruises' *Emerald Princess*. Instead, the ALJ commented that modern cruise ships provide more than just transportation and "[a] comparison of the relative values of these factors unrelated to

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would have returned it had it been found. However, since Princess never received a request for a refund and had no information about how, when or why the possible deposit had been posted, Princess was unable to locate the deposit in 2011. (*See* Redacted E-mail chain attached hereto as Exhibit 3.)

transportation would be based on pure speculation," and concluded that "[t]herefore, that difference in cost between two cruises is not recoverable in a reparation award." *See* Initial Decision, at 72. Also, Respondents' expert Ms. Blum, one of the nation's foremost travel writers on cruises, laid out her lengthy qualifications as a travel expert at the beginning of her Declaration. (*See* Declaration of Ethel Bloom, attached as Exhibit 2 to Respondents' Notice of Filing Traversing Evidence and Documentation, filed with the FMC on May 23, 2013.) She is more than qualified to explain why the comparison between those two cruises and fares is not accurate. For instance, as Ms. Blum explained, "[s]imilar to airline pricing, cruise pricing is dynamic which means lines constantly adjust their prices up and down based on complex computer models that factor such elements as remaining cabin inventory levels, booking trends, and the proximity to departure." *See id.* Therefore it would be pure speculation, as the ALJ mentioned, to compare factors determining the fares for both ships – particularly when the cabin sizes are different, the dates of sailing are different, the ports of call are different, and where one cruise occurs at the peak fall leaf viewing season whereas the other occurs after the fall leaves have fallen and turned brown. In short the ALJ correctly concluded that Complainants submitted no evidence showing entitlement to reparations based on the difference in price between the two cruises because it was a comparison of two entirely different products. No further evidence is required because the comparison made by Complainants between these two cruises and fares is not accurate and Complainants are not entitled to reparations based on speculation.

C. Complainants' reliance on *Bloomers* to Seek Attorney's Fees is Misplaced

As for Complainants' reliance on *Bloomers*, that case is not remotely similar to the facts and issues currently before the FMC. Simply put, attorney's fees are not awardable as

reparations here based on *Bloomers*, and the Shipping Act provides no basis or authority for such an award of attorney's fees and penalties as Complainants are seeking here.

Bloomers involved a long standing pattern of extortious conduct by a carrier toward its shipping customers. The carrier created and submitted fraudulent freight invoices to the shippers, demanded payment, and then threatened to file lawsuits if the shippers did not pay up. Apparently the carrier had the temerity to actually file about 70 lawsuits against various shippers including Bloomers. In response to the lawsuit Bloomers contended that the lawsuits amounted to extortion because the cost of hiring attorneys to defend against such suits exceeded the amount of the fraudulent additional charges demanded by the carrier. Bloomers filed a complaint with the FMC, alleging that the carrier's extortionary collection practices constituted a violation of the Shipping Act.

Here, the facts in Complainants' lawsuit are vastly different from the facts in *Bloomers*. Respondents are not guilty of engaging in a pattern of fraudulent conduct or extortion against the public or any group of customers. At most, all that Complainants have proven is that Princess' reason for not wanting Lisa Cornell was not "transportation related" and therefore could not justify barring her from sailing no matter how egregious her litigation conduct had been. That *Bloomers* is not applicable is borne out in more recent rulings where the Commission has expressly decided not to extend the ruling in *Bloomers* beyond the facts of that case. *See e.g., Burlington Northern Railroad Co. v. M.C. Terminals, Inc.*, 26 SRR 682 (1992) (rejecting the Complainant's reliance on *Bloomers* and ruling that the award of attorney's fees as reparations in *Bloomers* should be confined to the "unusual circumstances" of that case).

Additionally, *Bloomers* does not apply because not only were none of the Respondents parties in the Florida lawsuits, but it was Lisa Cornell who chose to commence the two lawsuits in the state courts for which she now seeks reimbursement of her alleged attorney's fees (and she actually never proved that she paid her husband anything for these supposed attorney's fees). In *Bloomers* it was the shipping company that initiated the series of lawsuits against the shipper. Another major difference is that Lisa Cornell was not adjudged to be the prevailing party in either of the two state court lawsuits. In the first case she settled the case after initially losing summary judgment. In the second case the court expressly ruled against her and dismissed all defendants with prejudice. In sum, as the ALJ astutely concluded, "[e]ven if Respondents violated the Shipping Act in every way imaginable, Respondents are not responsible for Lisa Cornell's attorney's fees and costs resulting from her choice to litigate in the wrong forum against the wrong party making the wrong claim." *See* Initial Decision, at 71.

Therefore, Complainants are not entitled to attorney's fees for their prior lawsuits.

D. No Reparations Are Available as to Cunard and P&O Cruises Because They Have Never Refused to Deal with Complainants

Complainants claim Cunard and P&O unlawfully refused to deal with them and ask for reparations and attorney's fees against these entities as well. They point to no specific instances where Cunard and P&O refused to deal, but instead make the nonsensical argument there was a refusal to deal because Carnival plc's General Counsel, Simon Walters, did not put a stop to Princess' "unlawful practices." This claim is without merit both factually and legally. Indeed, Lisa Cornell's own declaration eviscerates this claim. As the ALJ correctly determined, Lisa Cornell's declaration never stated she sought to deal or negotiate for a voyage on a ship operated by Cunard and P&O. Nor did she identify any occasion where Cunard and P&O refused to deal

or negotiate with her. *See* Initial Decision, at p. 46. Other than Lisa Cornell trying to book a vacation on one of Princess' ships, there are no allegations that Complainants ever tried to book a cruise with Cunard or P&O but were refused. Instead, Lisa Cornell merely claims in her May 13, 2013, declaration that she would have booked a voyage with Cunard and P&O on their U.K. and Australia websites, but that she was unable to do so because she was automatically redirected back to a U.S. website.[4] That U.K. and Australian websites electronically redirected her back to a U.S. website is NOT the same as Complainants actually contacting Cunard and P&O directly and then being told they could not book a cruise. This argument by Complainants is nonsense and boarders on fraud. Furthermore, since neither of these Respondents were ever involved in any of Cornell's previous lawsuits against GFA or Princess it is axiomatic that they cannot be responsible for her supposed attorney's fees expended in those cases.

In addition, this claim is refuted by the record evidence. Simon Walters explicitly stated in his declaration that he searched Carnival plc (Cunard and P&O) records and determined that:

> Lisa Anne Cornell, Lisa A. Cornell, Lisa Cornell, Ware Cornell, Ware Cornell, Jr., George Ware Cornell, George Ware Cornell, Jr., G. Ware Cornell, and G. Ware Cornell, Jr., are not now, nor have they ever been banned by Carnival plc from booking passage on Carnival plc ships (including Cunard and P&O).

See Declaration of Simon Walters dated April 8, 2013, and filed with the FMC on April 9, 2013. Then Travel Agent Expert, Greg Abrahamson, stated in his declaration that he personally

[4] It is unknown how Lisa Cornell allegedly attempted to book directly with Cunard and P&O on their websites in the UK, Australia, and Europe because she does not explain what steps she took and the exhibit she attaches to substantiate her claim is nothing more than a small blurry website link in her e-mail inbox with no accompanying text. Nonetheless, if she had correctly tried to book through the international websites she would not have been redirected to the U.S. website as she claims occurred. In order to successfully book through an international website the correct address must be entered into the address bar. For instance to access the Italian version of Google, one must end the address with ".it" instead of ".com" so that the international address is "www.google.it".

contacted Cunard to inquire about making a reservation for Lisa and Ware Cornell. After explaining the circumstances he was told that because he is a U.S. travel agent he could not book, but that Lisa Cornell:

> would be able to book a cruise on Cunard or P&O if she utilized a travel agent who was based in the United Kingdom.

(*See* Declaration of Greg Abrahamson dated and filed with the FMC on May 23, 2013.) There simply is no factual merit to this claim by Complainants yet alone any factual or legal basis upon which to award reimbursement of Complainants' claimed attorney's fees.

The claim also fails as a matter of law. It is well established that "firm demand and refusal" are "necessary elements to establish an actionable refusal to deal." *See Products Liability Insurance Agency, Inc. v. Crum & Forster Insurance Co.,* 682 F.2d 660 (7th Cir. 1982); *Paramount Film Distributing Corp. v. Applebaum,* 217 F.2d 101, 127 (5th Cir. 1954) ("We know of no principle of law which authorizes a person aggrieved by the deprivation of a right either statutory or constitutional to recover for such deprivation in the absence of a demand or request for its exercise"). Therefore, "unless claimant has actually sought to deal with a party and has been turned down, there can be no cognizable claim for refusal to deal." *Windy City, etc. v. Charles Levy Circulation Co.,* 550 F.Supp. 960, 964 (N.D.Ill.1982); *Nishimura v. Dolan*, 599 F.Supp. 484, 498 (E.D.N.Y. 1984) ("Absent a demand to purchase that which is the subject of an alleged refusal to deal, there can be no recovery under the antitrust laws"); *see also Gordon v. New York Stock Exchange, Inc.*, 366 F.Supp. 1261, 1263 (S.D.N.Y. 1973). Here, because Complainants never actually contacted Cunard or P&O, as a matter of law they have no cognizable claim against either of those companies. It is noteworthy that the ALJ specifically ordered Lisa Cornell to identify exactly when and how these entities refused to deal with her by identifying specifically when and how she tried to book passage on them, but Lisa Cornell did

not submit evidence answering this point.

Further, the Commission's own regulations affecting ocean shipping sets forth several exemptions to 46 U.S.C. § 41105(1) which clearly undermine Complainants' allegations. One of the exemptions, the "wholly-owned subsidiaries and/or parents exemption" clearly applies here. 46 C.F.R. § 535.307(c) titled "Agreements between or among wholly-owned subsidiaries and/or their parent" states in pertinent part:

> (c) Ocean common carriers are exempt from section 10(c) of the Act (46 U.S.C. 41105) to the extent that the concerted activities proscribed by that section result solely from agreements between or among wholly-owned subsidiaries and/or their parent.

See 46 C.F.R. § 535.307. Here, Respondents are all either the parent company or their wholly-owned subsidiaries. Thus, even if it were true (which it is not) that Respondents were engaged in a concerted action of refusing to deal with Complainants, pursuant to 46 C.F.R. § 535.307 Respondents are exempt from the proscription as affiliated companies cannot violated 46 U.S.C. § 41105(1) as a matter of law.

For these reasons, Complainants' Exception and request that the Commission enter a cease and desist order against Cunard and P&O is without merit and fails as a matter of law.

IV. There Are No Factual Issues Relating to Concerted Action Under Section 10(c) of the Shipping Act

Finally, Complainants contest the ALJ's ruling that Respondents did not engage in concerted action in violation of Section 10(c) of the Shipping Act. The undisputed evidence shows that Princess merely operated as a booking agent for certain other cruises for bookings that originated from its U.S. website or with U.S. travel agents. The undisputed evidence shows none of the various Respondents took any concerted action in deciding not to sell a vacation cruise ticket to Lisa Cornell (as the evidence shows only Princess had such a policy). More

importantly, other than Princess, no Respondent refused to deal or negotiate with Complainants because Lisa Cornell declined the ALJ's order that she submit specific proof that she actually had tried to book a cruise on any of the other named Respondent cruise lines.[5] Even though there has been no violation of Section 10(c), as a matter of law the Complainants cannot prevail on their claim because the "wholly-owned subsidiaries and/or parents exemption" clearly applies here because Respondents are all either the parent company or their wholly-owned subsidiaries. *See* 46 C.F.R. § 535.307. Respondent's corporate affiliation is public knowledge and creates no issue of material fact as to the outcome of the matter.

No discovery is necessary in this case and Complainants have already received any discoverable information relating to their claims. More importantly, nowhere in Complainants' Exception (nor anywhere else) do they ever articulate what specific discovery they seek to take nor how such discovery would have any bearing on the issues decided by the ALJ. Likewise they never explain why such discovery, if truly essential to their claims, was not done or even attempted at any time after Respondents filed their Motion to Dismiss or Alternatively Motion for Summary Judgment.

What is obvious is that Complainants demand discovery simply because they intend to continue trying to punish Princess and live up to their promise to "litigate this matter to the end of time." They are no longer concerned about the $585 that fueled this litigation six years ago. They are no longer concerned about Lisa Cornell's inability to sail on Princess ships as the ALJ

[5] As a practical matter the Commission cannot issue a blanket cease and desist order against Cunard and P&O as very few Cunard voyages include a U.S. port in its itinerary and none of the P&O Australia itineraries include any U.S. port. A cruise that begins and ends at a foreign port, and does not stop at a domestic port, does not constitute common carriage under the Shipping Act. *Am. Ass'n of Cruise Passengers, Inc. v. Carnival Cruise Lines, Inc.*, 911 F.2d 786, 788 (D.C. Cir. 1990). Here, Complainants have not alleged that they tried to book passage aboard any Cunard or P&O ship which included a U.S. port in its itinerary but were refused.

already ruled in their favor on that issue,[6] therefore the only purpose for continued discovery is a vindictive desire to keep their litigation war alive in order to spite Respondents with continued legal fees and in hopes of Ware Cornell someday being allowed to pocket his own self-generated fees. It is time this dispute is brought to an end.

V. Conclusion

For the reasons set forth herein, Complainants are not entitled to discovery, reparations, interest, attorney's fees or any determination that Respondents violated the Shipping Act. Respondents respectfully request the FMC disregard Complainants' Exceptions to and Appeal of Initial Summary Decision and affirm those portions of the Initial Summary Decision challenged by Complainants.

Dated: September 11, 2013
Miami, Florida

Respectfully Submitted,

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By: _____
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[6] Princess does not hereby waive its Exception on that issue and believes it should be permitted to submit further briefing and evidence on that issue since the ALJ made that ruling without notice to either party that the Commission was considering taking up *sua sponte* the issue of Lisa Cornell's ultimate claim against Princess that she should be permitted to sail.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Supplement to the Record has been furnished via Electronic Mail to G. Ware Cornell, CORNELL & ASSOCIATES, P.A. 2645 Executive Park Drive, Weston, FL 33331 on this 11th day of September, 2013.

By: _____
JEFFREY B. MALTZMAN
STEVE HOLMAN

Exhibit 1

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: 07-07894 CA CE 04

LISA ANNE CORNELL

Plaintiff,

v.

GLOBAL FINE ARTS, INC. a
Florida Corporation, and PRINCESS
CRUISE LINES, LTD.

Defendant,
_____/

AFFIDAVIT OF MONA EHRENREICH

Before me, the undersigned, Mona Ehrenreich, personally appeared and, having first been duly sworn, deposes and says:

1. I, MONA EHRENREICH, being duly sworn, do hereby declare from my own personal knowledge as follows.

2. I am over 18 years of age and am competent to give this affidavit.

3. At all times relevant hereto I have worked as General Counsel for Princess Cruise Lines Ltd. ("Princess"). Princess employees work under a common paymaster arrangement with Global Fine Arts ("GFA") and provides legal services to GFA. Under this arrangement I monitor legal affairs of Global Fine Arts including the *Cornell v. Global Fine Arts* litigation.

4. The case involved a claim for a refund of $585 notwithstanding that Lisa Cornell signed a contract specifying the $585 was non-refundable. Mr. and Mrs. Cornell turned this into an extremely expensive multi-year litigation which cost Global Fine Arts more than $100,000 in legal fees. Princess tried to put an early end to the litigation, offering to settle for many times

what Plaintiff had claimed as damages, but the offer was rejected. I felt the Cornells litigation tactics were extortionate, unethical, and unreasonable.

5. Several months before the mediation of this matter I placed Lisa Cornell on Princess' "Do Not Book" ("DNB") list because I did not want someone who had a proven record of breaching written contracts and then using extortionate litigation tactics to sail onboard a Princess ship. I made this decision alone and no one from Global Fine Arts had any input or involvement with my decision to place Lisa Cornell on the DNB list. I did not discuss placing Lisa Cornell on the Princess Do Not Book list with Dawn Haghighi who is another attorney in my legal department or with anyone at Global Fine Arts.

6. I was scheduled to attend the mediation of the *Cornell* matter personally, but at the last minute due to my medical care for cancer, I was unable to attend and was not in the office at that time. I had no involvement in the mediation or settlement of the matter and did not discuss the settlement of the case with anyone due to my illness. I learned the case settled after the fact when I returned to work.

7. I did not discuss my views as to whether Lisa Cornell should or should not be allowed to sail on Princess with Dawn Haghighi. Dawn Haghighi had no involvement in my decision to place Mrs. Cornell on Princess' DNB list. Prior to mediation of this matter I had not told Dawn Haghighi that I had placed Mrs. Cornell on the DNB list. I did not place Mrs. Cornell's husband, Ware Cornell, on the list.

8. Global Fine Arts never enticed or encouraged Princess to allow or not allow Lisa Cornell to sail.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: February 1, 2012

Mona Ehrenreich

MONA EHRENREICH

BEFORE ME, the undersigned authority, MONA EHRENREICH, this day ~~personally~~ (KE) ~~appeared, who is~~ ___ personally ~~known to me, or~~ who has produced CALIFORNIA DRIVERS LICENSE NUMBER B6516706. (KE) as identification, and who, being by me first duly sworn, deposes and says that she executed the foregoing, which is true and correct to the best of her knowledge and belief.

STATE OF CALIFORNIA)
)ss:
COUNTY OF LOS ANGELES)

SWORN TO AND SUBSCRIBED before me this 1st day of February, 2012

Kimberly J. Calderon

NOTARY PUBLIC
STATE OF CALIFORNIA ~~AT LARGE~~ (KE)
COUNTY OF LOS ANGELES

My Commission Expires: 3.25.2014

KIMBERLY J. CALDERON
Commission # 1883983
Notary Public - California
Los Angeles County
My Comm. Expires Mar 25, 2014

Exhibit 2

DECLARATION OF LISA ANNE CORNELL UNDER PENATY OF PERJURY

LISA ANNE CORNELL declares under penalty of perjury pursuant to §92.525, Florida Statutes (2009), and under 28 United States Code §1746, that she has read the foregoing declaration and the facts stated in it are true.

1. My name is LISA ANNE CORNELL. I reside in Weston, Florida.
2. In November,and December 2009, I traveled with my mother MARILYN J. MCGILLIVRAY on the Grand Princess on a 33 day cruise from Rome to Fort Lauderdale, Florida, arriving in Florida on December 21, 2009.
3. In March and April, 2010, I traveled with her on the Grand Princess from Fort Lauderdale through the Caribbean for 14 days.
4. I booked the second cruise through Princess directly. I booked the first cruise in my name through American Express.
5. My mother has numerous medical issues, not the least of which requires her to use a wheelchair. These issues require me to travel with her when she cruises.
6. When I entered into the mediated settlement agreement, I knew that some individuals claimed that they had been banned from cruising by certain cruise lines as a result of having filed lawsuits against them.
7. It was very important to me no such ban be imposed against me. It was important because in the first instance my mother loves Princess Cruise Lines and cannot travel without me. It was also important to me because through my

cruise ship should have to give up the right to cruise in the future because she stood up for herself.

10. During my cruise in the Spring of 2010, Princess solicited and accepted from me a deposit for a future cruise. Princess continues to hold this deposit which I intend to use on another Princess cruise.

11. The terms in the settlement agreement were negotiated for many hours. The conditions about traveling on ships in the Carnival fleet including those operated by Princess were important to me. I never heard until after the case was settled that I supposedly had been banned for a year. This could not have been true, because I was an honored guest on Princess for a total of forty-seven days during the period I was supposedly banned. From November 2009 through April 2010, my mother and I spent over $35,000 on these two cruises and related expenses.

12. My mother is upset with Princess but she seems to believe and I do believe that the lawyers in Princess' in-house legal department are not like the wonderful, professional, courteous and hospitable crew and officers that serve on Princess's ships.

13. All I seek in this motion to to make Global and Princess live up to its obligations.

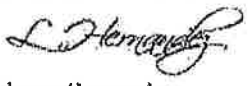
I declare, under penalty of perjury, that the above and foregoing to be true and correct.

LISA ANNE CORNELL

DATED: January 30, 2011

Exhibit 3

No information found for Lisa White Cornell nor Lisa Mcgillvray.



Laura Hernandez
Administrative Assistant to Stacy Souza
Director, Customer Relations
lhernandez@princesscruises.com
661 284 4322

Lynda Taylor/LGL/Princess Cruises
Legal

03/07/2011 04:15 PM

To Stacy A Souza/CPS/Princess Cruises@PrincessCruises
cc
Subject Re: Time sensitive requestLink

RESPONSE REQUESTED

Hi Laura,

Can you please check Ms. Cornell's mothers name? We are unsure of her last name, but Ms. Cornell's maiden name is McGillvray.

Thanks again,

Sunshine

Stacy A Souza/CPS/Princess Cruises
CSR
Sent by: Laura Hernandez/CSR/Princess Cruises

03/07/2011 03:04 PM

To Lynda Taylor/LGL/Princess Cruises@PrincessCruises
cc
Subject Re: Time sensitive requestLink

NO NEED TO REPLY

Hi Lynda,

We're unable to find information for Lisa White Cornell.

Laura Hernandez
Administrative Assistant to Stacy Souza
Director, Customer Relations
lhernandez@princesscruises.com
661 284 4322

Lynda Taylor/LGL/Princess Cruises
Legal

03/07/2011 12:12 PM

To Stacy A Souza/CPS/Princess Cruises@PrincessCruises, Joanna Crayon/CPS/Princess Cruises@PrincessCruises

cc

Subject Time sensitive request

RESPONSE REQUESTED

Hello Stacy and Joanna,

Can you kindly advise if Lisa White Cornell has any future cruise credits with Princess as of now? She previously sailed on the Imagination IM715. We need the information as soon as possible. Thank you in advance for your assistance.

Sincerely,

Sunshine Taylor